IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT APPEAL NO : 1943 of 1999

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 16/08/1999 in WP NO : 14330 OF 1991 on the file of the High Court.)

Between:

Bandi Madhu S/o.Mallaiah
Peddapalli Karimnagar Dist

..... APPELLANT

AND

1 T.Amarsingh S/o. Girdhar Singh
R/o. Peddapalli (V&M) Karimnagar Dist
2 T.Manjula Reddy D/o. Raji Reddy
R/o. Peddapalli (V&M) Karimnagar Dist
3 The District Collector
4 The Jt. Collector Karimnagar Dist
5 The Land Acquisition Officer/ The MRO Peddapally
Karimnagar
6 P.Kausalya W/o. Satyanarayana
R/o. Peddapalli (V&M) Karimnagar Dist
7 B.Anjamma W/o. Chander
R/o. Peddapalli (V&M) Karimnagar Dist
8 B.Narasamma W/o. Narasaiah
R/o. Peddapalli (V&M) Karimnagar Dist
9 B.Padmavathi W/o. Prabhakar
R/o. Peddapalli (V&M) Karimnagar Dist

10 A.Susheela W/o. Rajesham
R/o. Peddapalli (V&M) Karimnagar Dist
11 K.Rajeshwari W/o. Rayamallu
R/o. Peddapalli (V&M) Karimnagar Dist

.....RESPONDENTS

Counsel for the Appellant : MR.A.SUDERSHAN REDDY
Counsel for the Respondent No.: GP FOR SOCIAL WELFARE

The Court Made the Following :

ORAL ORDER (Per Hon'ble Shri Devinder Gupta, C.J) :

The order passed by the learned Single Judge on 16-08-1999 allowing W.P.No.14330 of 1991 is under challenge by the appellant – 4th respondent in the writ petition. Respondents 1 and 2 are the writ petitioners. The Official respondents are respondents 3 to 5 in the Writ Appeal and the remaining respondents are impleaded respondents in the writ petition as per the order dated 16-08-1999 in W.P.M.P.No.9663 of 1992. Learned single Judge while allowing the writ petition directed Mandamus to be issued directing the Land Acquisition Officer to pass award for the entire extent of land admeasuring Ac.12.37 guntas covered by Survey NOs.575 and 632 situated at Peddapally village and Mandal, Karimnagar District within a period of five months.

The appellant before us is questioning the validity and legality of such an order passed by the learned single Judge inter alia on the ground that when it was specifically pleaded on behalf of the Government that only Ac.2.36 guntas out of total area of Ac.12-37 guntas was acquired by the Government for public purpose and as per the Land Acquisition Officer, only an extent of Ac.2.36 guntas alone had been taken possession and delivered to the beneficiaries and not the entire extent of land, orders could not have been passed compelling the Government to acquire the full extent of the land.

We have heard the counsel for the Appellant and the learned Counsel for the respondents 3 to 5. None has put in appearance on behalf of the writ petitioners–respondents 1 and 2 though the name of the counsel has been shown in the cause-

list.

Learned single Judge has given minute details of the previous history. Writ Petitioner No.1 claims to be the legal heir of the original pattadar, whereas the Writ Petitioner No.2 claims to have substantial interest in the schedule land viz., Ac.12.37 guntas. The appellant and other respondents claimed to be the protected tenants. It appears that on 14-05-1986 consent was given by one Amar Singh, S/o. Giridhar Singh being the legal heir and pattadar of Survey NOs.575 and 632 admeasuring Ac.12.37 guntas for giving the land for house sites pending formal acquisition of the land. There is a dispute as regards whether the actual possession was delivered or not or whether it was taken over by the Mandal Revenue Inspector, Peddapalli or not o n 16-05-1986. But as per the pattadar, he delivered possession to the Mandal Revenue Inspector. On 30-06-1986 notification under Section 4(1) of the Land Acquisition Act (for short 'the Act') was published notifying the land for being acquired for public purpose and it is alleged that on 08-07-1986 house site pattas were distributed to 210 beneficiaries by the Mandal Revenue Inspector, Peddapalli. On 11-07-1986, the protected tenants filed W.P.No.8218 of 1986 seeking to declare the notification issued under Section 4(1) of the Act along with declaration issued under Section 6 of the Act to be illegal and void in respect of the land in question. Stay was granted by this Court in W.P.M.P.No.10933 of 1986 on 11-07-1986 protecting the possession of protected tenants and ultimately on 30-10-1986 notification under Section 4(1) of the Act was quashed. It was directed that possession shall remain with the beneficiaries and it will be open to the Government to issue notification afresh in accordance with law and then proceed to acquire the land as per the provisions of the Act. On 23-03-1987 fresh notification was issued under Section 4(1) of the Act. It was published on 18-04-1987. Again the protected tenants on 23-07-1987 filed Writ Petition No.9940 of 1997 seeking to have the notification quashed and set aside. W.P.M.P.No.13242 of 1987 & W.V.M.P.No.1481 of 1987 were decided on 05-08-1987 vacating the order of interim stay of dispossession, but granting interim stay of further proceedings. Ultimately, on 10-12-1987 Writ Petition No.9940 of 1987 was disposed of in terms of compromise entered into between the protected tenants and the pattadar of the land, which was filed in writ petition. The compromise was with respect to the manner of sharing of compensation among the pattadars and the protected tenants. On 12-02-1988 declaration under Section 6 of the Act was published. On 11-10-1988 the protected

tenants and owners approached the Court and filed W.P.No.15337 of 1988 for direction to issue notices to the petitioners under Section 9(3) & 10 of the Act to the protected tenants and owners and pass appropriate award. On 21-11-1988 orders were passed by the Court disposing of the W.P. with direction to the Land Acquisition Officer to issue notices to the protected tenants and owners and to pass appropriate award in accordance with the provisions of the Act. When the proceedings in making the award were in progress, the notification under Section 4(1) and 6 of the Act lapsed. Therefore, fresh notification under Section 4(1) and Section 6 of the Act were published on 04-08-1990. Writ Petition No.14330 of 1991 was filed on 19-11-1991 by the pattadars and owners for payment of 80% compensation. Orders were passed by the Court on 06-03-1992 in W.P.M.P.No.18210 of 1991 for payment of 80% compensation. On 24-04-1992 Mandal Revenue Officer, Peddapalli addressed a letter to the Government Pleader as regards taking of possession stating that initially possession was taken over on 16-05-1986 by the Mandal Revenue Inspector from unconcerned persons who were actually not in possession. Possession had to be obtained from the actual occupier namely the protected tenants. After referring to the various events, it was pointed out by him that in view of the non-provision of sufficient funds by the Government it has been decided to finalise the acquisition proceedings only to the extent of Ac.2.36 guntas out of Ac.12.37 guntas earlier proposed for acquisition. He also sent photographs demonstrating that the vacant land has not been utilized by the Government or by the beneficiaries to the extent of Ac.10-01guntas. He requested steps to be taken and file vacate petition in W.P.M.P.No.18210 of 1991. An order was passed on 18-09-1992 by the Court as regards payment of compensation making clear that it shall be confined, for the time being, only to an extent of Ac.2-36 guntas and the Mandal Revenue Officer was asked to conduct survey of the land. The Order reads:

1. The payment of 80% of the compensation amount which was directed to be paid as per my order dated 06-03-1992 shall be confined for the time being to an extent of Ac.2-36 guntas. The estimated compensation amount on that land to the extent of 80% calculated on the basis of the market value obtaining on the date of the latest Section 4(1) Notification shall be paid over to the petitioners, if they have title over the land, within a period of one month from the date of receipt of this order. In the meanwhile, the petitioners can furnish proof of their title before the Land Acquisition Officer. The interim order granted on 06-03-1992 will stand modified accordingly.

2. The Mandal Revenue Officer, Peddapally shall cause a survey of the land to be made of the land notified for acquisition in the presence of the petitioners or their representatives and get a plan drawn up of the acquired land in which the portion or portions of land occupied by the beneficiaries / assignees or other shall be indicated. The Revenue Divisional Officer, Peddapalli shall supervise the survey operations. The report together with a copy of the plan or any other observations made during the survey including the objections, if any, pointed out by the petitioners shall be submitted to the Government Pleader (Land Acquisition) in a sealed cover within a period of six weeks from the date of receipt of this order.

On 19-10-1992 W.P.No.13482 of 1992 was filed by Bandi Pullaiah and others for direction for payment of compensation. On 30-10-1992 panchnama was conducted by the Mandal Surveyor and award proceedings were recorded to the extent of Ac.2-36 guntas in S.No.632 for payment of 80% compensation as per the Court's order. The aforementioned W.P.No.14330 of 1991 was filed on 19-11-1991 for issuing direction to acquire the entire extent of the land and pay compensation. It is needless to add that in the writ petition, stand of the State Government was that actual possession of only Ac.2.36 guntas had been taken. Possession had not been taken of the remaining land and only Ac.2.36 guntas have been utilized and funds were also released to that extent and the Government have no intention to acquire the entire land. This was also the case of the 4th respondent before us and it was vehemently submitted before the learned single Judge that directions cannot be issued against the Government to acquire the entire extent of land.

It was demonstrated before the Court that as of 16th May, 1986, there was no question of the pattadars handing over possession of the entire land. May be that symbolic possession was handed over by them. But that would not amount to taking over possession by the Land Acquisition Officer pursuant to any proceedings under the provisions of the Act. Only in such like cases, when pursuant to an award made by the Land Acquisition Officer under the Act, that possession is taken by the Collector under Section 16 of the Act the land vests in the Government and once the land vests in the Government, the Government is precluded from denotifying the land from being acquired. So long the land has not vested in the Government, there is no embargo on the Government to denotify the land from being acquired in case

the notification has already been issued. In the instant case, notification under Section 4 (1) of the Act had been issued for Ac.12.37 guntas of land. But while the award proceedings were in progress, the Government expressed its desire only to acquire Ac.2.36 guntas of land. May be that this notification was in continuity of the earlier proceedings or compromise already been arrived at between the pattadars and the protected tenants in the manner of sharing of the amount of compensation or on giving consent to acquire the land. But that would not prevent the Government from expressing its intention not to acquire the land or to acquire only smaller extent of the land than notified. Government had already projected before the Court its stand that only Ac.2.36 guntas of the land was acquired and the remaining land is left vacant and only Ac.2.36 guntas had been utilized, and the remaining land has not been utilized. In such a situation, no Mandamus can be issued to the Government compelling it to acquire the entire extent of land. After all, it is the Government which has to pay compensation and it was brought to the notice of the Court that funds were not available. Therefore, direction issued to acquire the entire extent of land is beyond the jurisdiction of the Court. For that reason, order impugned cannot be sustained. We are informed that after the writ petition was disposed of, contempt petition was filed and for that reason, the Collector had no option but to proceed to pass an award on 8th November, 2000 for the entire extent of land i.e., Ac.12-37 guntas so as to comply with the direction of the Court dated 16-8-1999 passed in the writ petition. Subsequent events have been brought on record by way of an affidavit. In the subsequent affidavit filed also, it is stated that award for the entire extent has been passed on the direction of the court but the Government has not acquired the land beyond Ac.2.36 guntas. There are no eligible beneficiaries and therefore, the question of acquiring Ac.10-01 guntas does not arise at all. In these circumstances, while setting aside the impugned order passed by the leaned single Judge, we have no option but to set aside the award of the Collector passed on 8-11-2000 directing that it shall remain confined only to Ac.2.36 guntas and only the land to an extent of Ac.2.36 guntas in Sy.No.632 shall stand acquired pursuant to the notification and for the remaining land measuring Ac.10-01 guntas, the award stands quashed and set aside. The Collector (Land Acquisition) has to disburse the amount of compensation only for the land measuring about Ac.2.36 guntas to the persons interested in accordance with law and reference proceedings, if any, pending shall also stand confined to Ac.2.36 guntas of land. We may make one more thing clear that in these proceedings, we are not deciding the rival titles of

the appellant or the writ petitioners and whatever rights they have got in the land, they are at liberty to prosecute their remedies in accordance with law.

The writ appeal is accordingly allowed.

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(DEVINDER GUPTA, C.J.)

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(G.ROHINI, J.)

06TH JULY, 2004.

GBS / TVR

.REGISTRAR

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SECTION OFFICER

To

1. The District Collector
2. The Jt. Collector Karimnagar Dist
3. The Land Acquisition Officer/ The MRO Peddapally Karimnagar
4. 2 CCs to G.P. for Social Welfare, High Court Bldgs, Hyderabad.(OUT).

5.2 CD copies

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT APPEAL NO : 1943 of 1999

(Order of the Division Bench delivered by

the Hon’ble the Chief Justice)

06-07-2004